Supreme Court, U.S.
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No.

IN THE

SUPREME COURT of the UNITED STATES

LEO ROGERS DUGAS

Petitioner

V.

BILL PARKER

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This writ of certiorari addresses what appears to be a complete breakdown of the judicial process, just because a judge acted without his jurisdiction and was sued, your petitioner respectfully submits the following questions for this Court's determination in this his writ of certiorari:

1. Whether the Fifth Circuit and the United States District Court violated your petitioner's right **to due process** under the Fifth Amendment of the U.S. Constitution, e.g. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980)?

2. Whether respondent acted in "clear absence of all jurisdiction", e.g. *Bradley v. Fisher,* 13 Wall. 335, 351. Pp. 355-357, *Stump v. Sparkman,* 435 U.S. 349, 349-350 (1978)?

3. Whether the doctrine of **vertical stare decisis** barred the lower courts from ignoring earlier case(s) of this Court, *Hutto v. Davis,* 454 U.S. 370, 376 (1982), in ruling to dismiss petitioner's suit and appeal?

4. Whether the Fifth Circuit's and the District Court's monetary sanctions against your petitioner was justified, and their impeding petitioner's access to the courts of the United States constitutional?

LIST OF PARTIES

The parties to this case besides your petitioner are as follows:

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Leo Rogers Dugas, pro se, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Fifth Circuit is unpublished and is reproduced in Appendix A herein.

JURISDICTION

This Court has jurisdiction to hear this Petition for Writ of Certiorari pursuant to Title 28 U.S.C. § 1254(1). Where, the date of the Fifth Circuit's ruling is dated February 10, 2005 and this petition has been filed within the 90 days as described by 28 U.S.C. § 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The **Fifth Amendment** states in relevant part that "No person shall be ...deprived of life, liberty or property, without due process of the law."
2. **Title 28 U.S.C. § 2106**: The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

3. **Bankruptcy Rules of Appellant Procedure, Rule 8013:** On appeal the district court or bankruptcy appellant panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witness.

4. **Federal Rules of Civil Procedure Rule 60:** **(b) Mistakes, Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** ...(4) the judgment is void.

STATEMENT OF THE CASE

On January 27, 1997, your petitioner received his order of discharge. However, an appeal had been filed during petitioner's bankruptcy case and on March 03, 1999 the Fifth Circuit issued its mandate, **(App. C).** Thereafter, the **respondent,** a bankruptcy judge, *sua sponte* reopened petitioner's bankruptcy case and set a **hearing** date and at this scheduled hearing defendant Claron Corporation failed to appear.

Some 18 months after this **hearing** your petitioner moved the district court, via mandamus, to move the bankruptcy court to issue its determination from the **hearing**, and before the district court ruled the bankruptcy court (respondent) on August 24 2001 issued its decision as directed by the Fifth Circuit's mandate. Defendant Claron chose not to move for a new trial, but opted to appeal and file a Rule 60(b) motion.

After defendant Claron perfected its appeal the bankruptcy court (respondent sitting as the judge) held a hearing to determine Claron's Rule 60(b) motion **(App. D, page 1-2)**. Wherein the bankruptcy court (respondent) ignored the rulings of the Fifth Circuit, in that, it was the **continuation** of the action in state court by Claron that violated the petitioner's *automatic stay* **(App. C, page 10)**. But, the bankruptcy court's (respondent) focus was rather, if, (1) petitioner would in fact prevail in the yet uncompleted remanded **(App. C, page 5)** state court action, and (2) what import was petitioner's stock in the defunct corporation (which generated the funds held in the registry of the court) were named in the remanded cases.

Thereafter, Claron moved the district court to remand the case to the bankruptcy court (respondent) **(App. C, Page 1-2)**. Petitioner filed his motion to dismiss Claron's appeal where Claron (1) failed to appear at the first trial and therefore there was no trial error Claron could complain of on appeal, (2) failed to obtain a **supersedes bond** from the money judgment, and (3) petitioner filed in another district court a certified copy of the August 24, 2001 money judgment pursuant to 28 U.S.C. § 1964.

The district court determining Claron's appeal viewed Claron's motion to remand "...as a motion to voluntarily dismiss appeal" and issued its *Order Dismissing Bankruptcy Appeal*. Claron acquiesced to the dismissal order **(App. B)** and **chose not to appeal** it. However, some 90 days later respondent issued his order **(App. D)**. Its this order, petitioner asserts was done without any jurisdiction **absent remand** and vacated the August 24, 2001 money judgment, being the personal property of petitioner.

Petitioner appealed the **Order** granting Claron's Rule 60(b) motion as being void. The district court ruled against your petitioner **(App. E)** and this case is now before this Court docket No. 04-1180. Petitioner sued respondent in state court and respondent removed this suit to federal court. This suit was dismissed and your petitioner was sanctioned. Thereafter, petitioner timely filed an appeal to the Fifth Circuit and the Fifth Circuit upheld the district court's decision(s) and sanctioned petitioner **(App. A, pages 1-4)**. Your petitioner has now timely filed this, his, writ of certiorari to address the issues set forth herein.

A. Factual Background

The district court **(App. B, page 1-2)**, sitting in its appellant role, ruled that:

> "...the Court is of the opinion that the appeal should be dismissed." and
> "...that Claron Corporation's appeal from the bankruptcy court is hereby **Dismissed." (App. B, page 1-2).**

Nowhere in the **(App. B)** ORDER DISMISSING BANKRUPTCY APPEAL does the district court direct the bankruptcy court (respondent) to go forward with the granting of Claron's Rule 60(b) motion. A closer look at the ORDER DISMISSING BANKRUPTCY APPEAL **(App. B, page 1-2)** shows that petitioner's *Motion to Dismiss Appeal* was considered and did affect the outcome of Claron's appeal, a fact ignored by respondent.

Where, **if in fact,** the district court's intent in issuing the ORDER DISMISSING BANKRUPTCY APPEAL was that of **a remand,** as postulated by respondent, then it must be said that petitioner's *Motion to Dismiss* would have been denied and as can be seen in **Appendix B**, it was not.

Thereafter, respondent issued his *ORDER GRANTING AMENDED MOTION OF CLARON CORPORATION FOR RELIEF FROM JUDGMENT PURSUANT TO BANKRUPTCY RULE 9024 FOLLOWING DISMISSAL OF APPEAL BY DISTRICT COURT* ("the Order" App. D), the Fifth Circuit references "the Order" in its Case No. 04-40625, see page one of **Appendix A** attached hereto.

Giving the fact that remand was sought by appellant Claron and never granted (where district court viewed motion for remand as one to voluntary dismiss appeal) **(App. B)**. It was United States District Judge Clark's attempt to vitiate this unappealed order **(App. E)** that petitioner requested recusal of Judge Clark in the case now before this Court. Where, jurisdiction over the issues Claron placed before Judge Heartfield **(App. B)** were now *res judicata* to Judge Clark, a fact Judge Clark ignored. It was not an adverse ruling against petitioner that prompted in the motion for the recusal of Judge Clark

Petitioner filed Case No. 04-40508 just before filing Case No. 04-40625 in the Fifth Circuit (now before this Court). On October 19, 2004 the Fifth Circuit denied petitioner's appeal and is now before this Court docket number 04-1180. The Fifth Circuit in Case No. 04-40508 stated "The Dugases are cautioned that filing additional frivolous motions, suits, or appeals may result in the imposition of sanctions."

The Fifth Circuit in Case No. 04-40625 sanctioned your petitioner $500 **(App. A, page 3)** and stated:

> "This court has previously warned Dugas that he could be sanctioned if he persisted in filing frivolous motions, suits, or appeals. Because Dugas did not heed this warning, he is ORDERED to pay a sanction in the amount of $500, payable to the Clerk of this Court."

Because, Case No. 04-40508, which issued this above stated warning, **had already been filed**, the Fifth Circuit erred in its imposition of monetary and filing sanctions, a fact ignored by the Fifth Circuit. This sanction ruling deprived petitioner of filing an *en banc* motion, as petitioner reasoned he would be further sanctioned by the panel of Reavley, Jolly and Higginbotham, Circuit Judges.

The only possible reason that petitioner's appeal was dismissed was that this Panel viewed Appendix B as an order of remand. Given the supervisory role over the inferior courts, your petitioner asks this Court to correct what the inferior courts have created and allow *the due process* guaranteed your petitioner by the Fifth Amendment of the Constitution to be fulfilled.

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit has so departed from the accepted and usual course of judicial proceedings in its ruling, Appendix A, as to leave an appearance of judicial prejudice against petitioner for allowing the following to stand by this ruling: